

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELNA MARIE BERRY; BART BERRY;
GWINT L. FISHER; RENÉE FISHER; IRIS
RUIZ; GARET CUNNINGHAM; ROSALB
RUIZ; SUZANNAH LUHN ANDERSON
RYAN ANDERSON, DEBBIE ASHKAR an
STEVEN ASHKAR, individually and on behalf
of their minor son, C.A.; KENDRA FROME an
DAVID FROME, individually and on behalf of
her minor children J.F., H.F. and O.F.;
MARGARITA ANDERSON; JOS
ANDERSON; MINH KIM BUI; MINH TAM
BUI; EVAN GRANGER; CHRISTOPHER
HICKMAN; TERESA HICKMAN; MEGAN
HUTCHENS; ELIZABETH LE; CONNER
MEJIA; JESSICA MONTOYA; ROBERT
MONTOYA; VI NGUYEN; MICHAEL
SIMENTAL and GRACE SIMENTAL,
individually and on behalf of their minor
children E.S. and K.S.; EVAN SMITH;
LORRAINE SMITH; DENISE STEWART;
NATHANIEL STEWART; GEORGE TATE
JR., L'TOYA WHEELER-TATE; MARY
GRACE CATLEUSTARIS; ROBERTO
USTARIS; JENNIFER WINEGAR; DARREN
WINEGAR; KIRSTEN WRIGHT; THOMAS
KASTEN; ROBERT WRIGHT; individually,

Plaintiffs,

v.

THE BOEING COMPANY, a Delaware profit
corporation; SPIRIT AEROSYSTEMS, INC., a
Delaware profit corporation; AND ALASKA
AIRLINES, an Alaska corporation,

Defendants.

NO. 2:24-CV-0134-RSM

ORDER DENYING MOTION TO ISSUE
CLASS NOTICE

1 This matter comes before the Court on Plaintiffs’ Motion for the Court to order a notice
2 be sent to the former putative class pursuant to Rule 23(d)(1)(B). Dkt. #29. This lawsuit was
3 filed on behalf of passengers aboard Alaska flight 1282 where a blowout of a fuselage panel
4 caused injuries. Although this was initially filed as a putative class action, Plaintiffs have
5 amended their complaint to join 37 plaintiff passengers and remove class allegations. *See* Dkt.
6 #33. Plaintiffs now request that “because other putative class members may be relying on the
7 class to protect their interests, the Court order a “simple class notice advising them that the class
8 has been withdrawn.” Dkt. #29 at 1–2. Plaintiffs provide no evidence of confusion. They do
9 attach a list of articles that mention a class action for the Alaska flight 1282 incident. *See* Dkt.
10 #30-2.

12 Defendants Boeing and Alaska Airlines oppose this Motion. Boeing states that the notice
13 is “essentially a solicitation to represent the putative class members as individual plaintiffs.” Dkt.
14 #41 at 2. Boeing argues that “notice to putative class members before a certification decision is
15 unnecessary when dismissal would cause no prejudice to the putative class members.” *Id.* (citing
16 *Bray v. Simon & Schuster, Inc.*, 2014 WL 2893202, at *3 (W.D. Mo. June 25, 2014); *Clark v.*
17 *Hyatt Hotels Corp.*, 2020 WL 6870599, at *2 (D. Colo. Oct. 30, 2020)). Boeing highlights the
18 lack of evidence of confusion among putative class members. Boeing points out:

20 Flight 1282 occurred less than five months ago, and there is no
21 imminent filing deadline under any potentially applicable statute of
22 limitations. Any potential plaintiff can easily secure counsel and file
23 suit, and many have already done so. Nearly a dozen other firms are
24 already representing plaintiffs in pending or potential litigation
25 arising out of the accident even though this matter has been pending
26 as a putative class action for four months. Indeed, Plaintiffs’ counsel
27 here added 24 new passenger-plaintiffs to the Second Amended
Complaint, belying the notion that passengers were simply relying
on class allegations to protect their interests.

Id.

1 Under Fed. R. Civ. P. 23(d)(1)(B), the Court “may issue orders that require—to protect
2 class members and fairly conduct the action—giving appropriate notice to some or all class
3 members of any step of the action.” Alaska argues it is unclear if the Court can even issue an
4 order for a pre-certification notice to potential class members under this rule. Dkt. #39 at 3 (citing
5 *DW Volbleu, LLC v. Honda Aircraft Co., Inc.*, 2021 WL 5826536, at *2 (E.D. Tex. Dec. 8,
6 2021)).

7
8 The Court agrees with Boeing that Plaintiffs have failed to demonstrate confusion or
9 prejudice to putative class members. There is no reason to believe that flight 1282 passengers
10 have had or will have any difficulty securing counsel. Although it appears unsettled whether or
11 not this type of notice can be given under this rule prior to class certification, the Court declines
12 to do so in its discretion under the facts of this case.

13 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
14 finds and ORDERS that Plaintiffs’ Motion for the Court to order a notice be sent to the former
15 putative class pursuant to Rule 23(d)(1)(B), Dkt. #29, is DENIED. Given the above basis for the
16 Court’s rulings, the Court declines to strike anything in Plaintiffs’ Reply brief as requested by
17 Defendants’ Surreply. The Court further STRIKES Plaintiffs’ Motion for Leave to Amend
18 Complaint, Dkt. #24, as duplicative of the stipulated motion to amend, Dkt. #31, which has
19 already been granted by the Court.
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21 DATED this 18th day of June, 2024.
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25 RICARDO S. MARTINEZ
26 UNITED STATES DISTRICT JUDGE
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